



Local Boundary Commission

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Nancy Cannington, Member, Second Judicial District

Kevin Waring, Member, Third Judicial District

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Statement of Decision

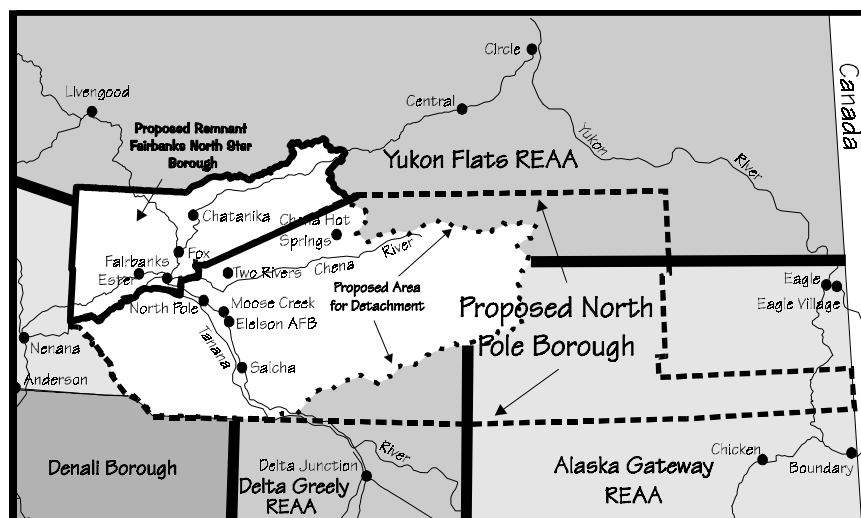
IN THE MATTER OF THE PETITION FOR)
DETACHMENT OF 5,400 SQUARE MILES)
FROM THE FAIRBANKS NORTH STAR)
BOROUGH AND THE PETITION FOR)
INCORPORATION OF THE HOME RULE)
NORTH POLE BOROUGH)

Section I - Introduction

Introduction. This matter involves two related petitions, each of which was signed by more than 1,600 individuals. The first petition sought the detachment of approximately 5,400 square miles from the Fairbanks North Star Borough (FNSB). The second petition proposed to incorporate the North Pole Borough (NPB), a home rule borough.

The boundaries of the proposed NPB encompassed an estimated 9,350 square miles, including the 5,400 square miles proposed for detachment from the FNSB. The 3,950 square miles of the proposed NPB that lie outside the FNSB are part of Alaska's unorganized borough. As is shown on the accompanying map, that 3,950 square mile area lies within three different regional educational attendance areas.

The area proposed for incorporation is inhabited by an estimated 23,713 residents. It is reported that all but 30 - 35 of those individuals reside in the FNSB.



Section II - Proceedings

Petitions Lodged. The detachment and incorporation petitions were lodged with the Alaska Department of Community and Regional Affairs (DCRA) on March 17, 1994.¹ On March 18, DCRA asked the Division of Elections in the Office of the Lieutenant Governor to determine whether the petitions had been signed by a sufficient number of qualified individuals.

On March 25, 1994, the Division of Elections determined that the incorporation petition had sufficient signatures, but that the detachment petition was 47 short of the number of qualified signatures required by law.²

Also on March 25, 1994 the Petitioners' Representative supplemented the petition materials by submitting a budget covering the proposed borough's second and third years of operation.

On March 29, 1994, the Petitioners' Representative submitted additional signatures for the detachment petition. On March 30, 1994, the Division of Elections determined that, with the supplemental signatures, the detachment petition had been signed by a sufficient number of qualified individuals.

In reviewing the form and content of the petitions, DCRA reported that it attempted to balance its desire for expertly crafted materials against the realization that the Petitioners had limited resources. DCRA reported further that its standard for review was that the form and content of the petitions must be sufficiently credible, complete and accurate to allow interested parties to analyze and comment upon the proposal.

On May 2, 1994, DCRA determined that the form and content of the petitions were deficient. DCRA advised the Petitioners' Representative in a letter that day that *"there is a great deal of work that remains to be done on the petition before we will accept it. Many of the deficiencies identified in this letter were noted last year in our several reviews of various drafts of the petition materials."*

DCRA consulted with the Alaska Department of Law concerning whether the extensive modifications which the petitions needed would require the gathering of new signatures. DCRA reported that the Department of Law expressed the informal opinion that substantial deficiencies in a petition to the LBC may be corrected by the Petitioners' Representative and resubmitted to DCRA, and that it is not necessary that the corrected petition be circulated for voter signatures as required for the original petition.³

On November 26, 1994, the Petitioners' Representative submitted multiple materials in an attempt to remedy the deficiencies in the petitions. On January 4, 1995, DCRA advised the Petitioners' Representative that the revised petitions were an improvement over the earlier submission, but they still did not fully respond to the technical concerns

¹ DCRA serves as staff to the Local Boundary Commission pursuant to AS 44.47.050(a)(2). Statutes and regulations require that petitions be lodged with DCRA for review of the form and content.

² The petition for detachment as originally submitted was signed by 1,680 individuals. 19 AAC 10.410(a)(5) required that the petition be signed by at least 10% of the persons registered to vote in the territory -- in this case 1,467. The Division of Elections determined that only 1,420 of the signatures were from qualified voters. The subsequent submission of additional signatures brought the total number of qualified signatures to the required minimum. The NPB incorporation petition was signed by 1,633 individuals, 144 of whom were residents of the City of North Pole. The other 1,489 signatures were from residents of the remainder of the proposed NPB. Under AS 29.05.060, the petition needed 81 qualified signature from residents of the City of North Pole and 1,141 from the remainder of the proposed NPB.

³ DCRA noted that the Department of Law's advice reflected its reading of AS 29.05.070 and 19 AAC 10.440, as well as its experience and understanding that courts are typically accommodating or lenient regarding technical deficiencies in petitions developed by voters. Further, the Department of Law reasoned that a petition to the LBC is different than an initiative, referendum or recall petition. Unlike those petitions, a petition to the LBC results in multiple opportunities for public review, debate and consideration of the petition before decisions are made.

noted in its May 2, 1994 letter. Notwithstanding, DCRA took the position that the information that was lacking at that point was such that it did not warrant further protracted efforts to refine or supplement the petition prior to beginning the formal public review.

Petitions Accepted for Filing. Because DCRA concluded that further protracted efforts to refine the petition were unwarranted, it accepted the petition for filing on January 4, 1995. In doing so, DCRA stressed its belief that the proposal would succeed or fail on the basis of fundamental policy issues rather than technical details which may be lacking in the petition.

Notice of Filing of the Petitions. In its January 4, 1995 letter accepting the petitions for filing, DCRA instructed the Petitioners' Representative to proceed with notice of the filing of the petition. April 7, 1995 was established as the deadline for the filing of responsive briefs and informal comments supporting or opposing the petition.

Deadline for Responsive Briefs & Comments Extended. On January 13, 1995, the deadline for filing responsive briefs and comments was extended from April 7 to July 6, 1995 by the Acting Chairperson of the Local Boundary Commission.⁴ The extension had been requested by the FNSB because it had indicated that other commitments would not allow it to properly respond to the petition any earlier.

An amended notice of the filing of the petition was prepared. The amended notice of the filing of the petition was published, posted and distributed as required by law.

Petitioners' Informational Sessions. The Petitioners held eight public informational sessions concerning their proposal from February 10 -18, 1995. The purpose of the sessions was to provide information and respond to questions concerning their proposal. The sessions were held as follows:

February 10, 6:30 p.m.	Salcha Elementary School
February 11, 1:00 p.m.	FNSB Building
February 13, 6:30 p.m.	North Pole Middle School
February 14, 6:30 p.m.	Ticasuk Brown Elementary School
February 15, 6:30 p.m.	Two Rivers Elementary School
February 16, 6:30 p.m.	Anderson-Pennell School
February 17, 6:30 p.m.	Badger Elementary School
February 18, 2:00 p.m.	Noel Wien Library

Responsive Briefs and Comments Filed. Timely responsive briefs were filed by the following parties:

- Greater Fairbanks Chamber of Commerce;
- FNSB;
- Alaska Gateway School District;
- Mapco Alaska Petroleum, Inc.;
- National Education Association - Alaska ("NEA");
- Alaska AFL-CIO on behalf of the Fairbanks Central Labor Council;
- Alaska State District Council of Laborers;
- FNSB School District;
- Feasibility and Research Committee, a group of 13 residents of the North Pole area;
- Salchans for Education, a group of Salcha area residents.

⁴ On January 13, 1995, LBC Chairperson Darroll Hargraves announced that he would recuse himself with regard to the NPB proceedings due to a conflict of interest. The conflict stemmed from the fact that he was the Superintendent of the Alaska Gateway School District and the District planned to formally oppose the NPB proposal inasmuch as it included part of the Alaska Gateway School District. The Chairperson's duties concerning the NPB proposal were delegated to the Vice-Chairperson.

In addition to the responsive briefs, letters providing informal comments were received from 57 parties. These included correspondence from the following:

- Tanana Chiefs Conference, Incorporated;
- Lute Cunningham, Mayor, City of North Pole;
- Northern Alaska Environmental Center;
- Resolution 95-4, Delta-Greely School District;
- Tanana Valley League of Women Voters;
- Chena Hot Springs Road Residents Opposed to the New Borough;
- U.S. Air Force;
- Tok Chamber of Commerce;
- Eagle Village Council; and
- City of Eagle.

More Corrections to Petition Filed. On July 7, 1995, the Petitioners filed 8 additional pages of corrections to the petition. The corrections:

- reduced the proposed areawide property tax levy from 14.337 mills to 11.837 mills, a reduction of 2.5 mills (17.4%);
- increased the proposed non-areawide property tax levy from 0.438 to 1.0, an increase of 0.562 mills (77.9%);
- changed the Sheriff's Department from an areawide function to a non-areawide function;
- reduced the operating reserve by \$6.5 million over three years [\$2,000,000 (42.9%) for FY '96; \$2,500,000 (58.2%) for FY 97; and \$2,000,000 (59.2%) for FY '98];
- reduced funding for emergency services other than the Sheriff's Department by \$31,500 (7.2%) in each of the three fiscal years.

DCRA noted that the corrections themselves contained numerous errors and omissions. DCRA also expressed concern over the timing of the July 7 submission. In that regard, DCRA noted that the corrections had been available for submission by the Petitioners in early April, however, they were held back until the day after the deadline for the filing of responsive briefs and comments. An article in the July 8, 1995, edition of the Fairbanks Daily-News Miner indicated that the timing of the July 7 submission was intended by the Petitioners as a punitive measure against the FNSB. Specifically, the article stated, *"After initially denying they intentionally filed the change after the deadline, an organizer of the proposed borough admitted the group wanted revenge against the Fairbanks borough for receiving a 90-day extension to file its brief. Fairbanks North Star Borough administrators asked for the extension because they were in the middle of their budget process when the first deadline arrived. 'You're not dealing with stupid people here,' said Bill Bostic, Jr., who calls himself the 'sergeant-at-arms' of the proposed borough. 'We have been stymied by the borough earlier this year when they changed the date. So we decided it would be in our best interest to send this out when we did. If they don't like that, I don't know what they can do about it."*

On August 11, 1995, the LBC stipulated that respondents would be allowed to review and comment on the July 7 corrections until September 1, 1995. The FNSB was the sole respondent to submit comments on the corrections. On August 23, 1995, the FNSB filed 23 pages of comments concerning the Petitioners' corrections.

Restraining Order & Injunction Requested by Petitioners. On December 15, 1995, the Petitioners' Representative petitioned the Superior Court for a temporary restraining order to prevent the FNSB from incurring any bonded indebtedness after January 4, 1995, the date on which DCRA accepted the petition for filing. The petition to the Court also asked for an injunction to prevent the FNSB from incurring any new debt until the LBC acted on the petition. Further, the Petitioners sought an order requiring the FNSB

to assist in a transition plan and to provide all requested information regarding bonded indebtedness.

On January 19, 1996, the Superior Court denied the petition for the restraining order and injunction and dismissed the action. In doing so, the Court noted that the Petitioners had failed to show that the detachment petition will likely succeed. Further, the Court noted that the Petitioners *“have been responsible for some of the delay regarding this matter. . . On that basis alone, the petition for restraining order should be denied.”*⁵ The Court did grant the Petitioners’ request, to the extent it may be at issue, for an order requiring the FNSB to comply with Alaska Administrative Code requirements of cooperation in providing the Petitioners with copies of public records relevant to the detachment issue.

DCRA Draft Report Issued. On March 29, 1996, DCRA issued a 60-page draft report and recommendation concerning the detachment and borough incorporation proposal. The draft recommended that the proposal be denied because, in DCRA’s view, it failed to meet requisite standards. More than 200 copies of the report were distributed to individuals for review and comment. May 31, 1996 was established as the deadline for the receipt of comments on the draft. Sixteen organizations and individuals submitted timely comments on the draft report.

DCRA Informational Meeting Conducted. On May 29, 1996, DCRA conducted its requisite public informational meeting concerning the NPB proposal at the North Pole High School. An estimated 50-60 individuals were in attendance. DCRA reported that the meeting began with a 20-minute presentation by DCRA outlining its provisional report. Details were provided concerning the criteria and procedures that would be used by the Commission to judge the NPB proposal. DCRA then summarized its assessment of the NPB proposal and its recommendation to the Commission that the proposal be denied. Following the presentation, the audience was given the opportunity to ask questions and to make comments concerning the NPB proposal. That part of the informational meeting reportedly lasted approximately one hour and forty-five minutes.

DCRA Final Report Issued. Following its informational meeting and consideration of the written comments on its draft report, DCRA issued its final report and recommendation on the NPB proposal on July 8. Copies of the report were distributed to 163 individuals and organizations.

Hearing Scheduled and Conducted by the Local Boundary Commission. The Commission scheduled hearings on the proposal for August 6, 1996 in North Pole and August 7, 1996 in Fairbanks.

Notice of the public hearings was provided as follows:

- a copy of the notice was mailed on June 27, 1996 to 163 interested and potentially interested individuals and organizations;
- the notice was published as a 2 column x 9-inch display ad in the *Fairbanks Daily News-Miner* on July 1, July 8 and July 15, 1996;
- the notice was published three times in the *Alaska Administrative Journal*;
- the Petitioners’ Representative was asked to post the notice in at least 3 public and prominent locations in the area proposed for incorporation;
- the North Pole City Clerk, FNSB Clerk, and Fairbanks City Clerk were each asked to post the notice in places where the respective local governments customarily post their notices;
- DCRA staff in Fairbanks was asked to post the notice;
- 14 radio and television stations serving the North Pole and Fairbanks areas were provided with the notice along with a public service announcement which they were asked to broadcast:

⁵ North Pole Borough Planning Committee v. FNSB, 4FA-95-3000 Civil

- the North Pole City Clerk, FNSB Clerk, and Fairbanks City Clerk were each asked to make copies of the notice available to the public.

On August 6, 1996, Commissioners Wasserman, Cannington, Walters, and Waring conducted the public hearing at North Pole.⁶ The hearing lasted from approximately 7:00 p.m. to 10:45 p.m. On August 7, 1996, Commissioners Wasserman, Cannington, Walters, and Waring conducted the public hearing at Fairbanks. That hearing lasted from approximately 3:00 p.m. to midnight.

Following the August 7 hearing, the Commission deliberated for approximately one and one-half hours. Following the deliberations, the Commission denied the petitions by a unanimous vote of the four members participating in the proceedings. Section III of this decisional statement explains all of the major considerations leading to the decision.

Section III - Findings and Conclusions

Based upon the record in this proceeding, the Local Boundary Commission makes the finding and conclusions set out in this section. Said record includes the following materials:

- a) petitions for detachment and incorporation, with accompanying briefs and exhibits (as corrected by the Petitioners);
- b) responsive brief of the Greater Fairbanks Chamber of Commerce (4-page brief accompanied by 1 exhibit of 40 pages);
- c) responsive brief of the FNSB (158-page brief accompanied by 60 exhibits containing 365 pages);
- d) responsive brief of the Alaska Gateway School District (12-page brief accompanied by 2 exhibits of one page each);
- e) responsive brief of Mapco Alaska Petroleum, Inc. (14-page brief);
- f) responsive brief of the National Education Association - Alaska (10-page brief);
- g) responsive brief of the Alaska AFL-CIO on behalf of the Fairbanks Central Labor Council (3-page brief);
- h) responsive brief of the Alaska State District Council of Laborers (3-page brief);
- i) responsive brief of the FNSB School District (17-page brief accompanied by one exhibit containing 285 pages);
- j) responsive brief of the Feasibility and Research Committee, a group of 13 residents of the North Pole area (14-page brief);
- k) responsive brief of the Salchans for Education, a group of Salcha area residents (15-page brief and two exhibits of one page each);
- l) letters from 57 individuals commenting on the petition;
- m) the Petitioners' July 7, 1995 "corrections" to the petition;

⁶ On August 5, 1996, Commissioners Wasserman, Cannington, and Waring addressed the March 17, 1996 letter from the Petitioners' Representative requesting that Local Boundary Commission member William Walters "be disqualified from the petition process as it pertains to the North Pole Borough for a clear and defined conflict of interest." The Petitioners' Representative stated that Mr. Walters served on the FNSB Planning Commission until September 1995, and further alleged without proof that "This organization (the FNSB Planning Commission) actively opposes the petition for the North Pole Borough." (Mr. Walters resigned from the FNSB Planning Commission upon his appointment to the Local Boundary Commission.) Acting Chairperson Wasserman made a determination that those circumstances represented no conflict in terms of the Executive Branch Ethics Act. Commissioners Wasserman, Cannington, and Waring also determined that Commissioner Walters' residency in the FNSB and his past association with its planning commission were minor and inconsequential in terms of his ability to properly carry out his duties as a member of the Commission. Consequently, he was allowed to participate in the proceedings as provided by Article IX of the Commission's bylaws.

- n) FNSB's comments on the Petitioners' July 7, 1995 "corrections" to the petition;
- o) Petitioners' reply brief in response to the responsive briefs;
- p) DCRA's draft report;
- q) letters from 16 individuals commenting on DCRA's draft report;
- r) DCRA's final report;
- s) testimony and comments at the August 6, 1996 hearing; and
- t) testimony and comments at the August 7, 1996 hearing.

The law at 19 AAC 10.270 provides that territory may be detached from an organized borough only if the Commission determines that the detachment will serve the balanced best interest of the state, the territory to be detached and the political subdivisions affected by the detachment. In the course of making its determination concerning the balanced best interests, the Commission is free to consider any factor it deems relevant. In this case, the Commission considered 9 different factors based on provisions in Sections 1 and 3 of Article X of Alaska's Constitution, AS 29.05.031, 19 AAC 10.045 - 19 AAC 10.060, and 19 AAC 10.270. Findings and conclusions concerning each of the nine factors are presented below.

1. Regarding the health, safety and general welfare of the borough and the territory after detachment.

Economies of Scale. There is overwhelming evidence in this case that the FNSB is an extremely well integrated borough in terms of its social, cultural and economic characteristics, natural geography, and transportation facilities.

Dr. Logan, who testified on behalf of the Petitioners, suggested that competing boroughs would be of value in the long run as resulting economic competition would provide incentives to refine services. However, that concept is not the one that was embraced by the founders of the Alaska Constitution.

In February 1996, the Commission engaged in detailed discussions with Judge Thomas Stewart, Vic Fischer and Dr. George Rogers -- all of whom were active at the Constitutional Convention, particularly with regard to development of the principles of local government. It was stressed at the February meeting that the Constitutional Convention officials had examined municipal frameworks in the contiguous 48 states and other parts of the world specifically in order that Alaska could avoid the pitfalls experienced in those areas.

The goal of avoiding the problems experienced by others is clearly reflected in the standards for boroughs in Article X, Sections 1 and 3 of the Constitution. The delegates provided that the regional governments in Alaska would have natural boundaries and that they would be economically integrated. Given those characteristics, regional governments would enjoy economies of scale where government would work in a practical sense. Further, it is the Commission's understanding that the intent of the Constitutional Convention delegates was that certain State services would be carried out through regional governments.

The Petitioners' willingness to sacrifice essential services in order to "be free" is an admirable sentiment. However, it is exactly the point that the Constitutional Convention delegates appear to have been working against. It seems that the delegates clearly did not want the political fragmentation found throughout the United States. For example, ten to fifteen years ago New York City, despite its huge economy, was on the verge of bankruptcy. That was partially the result of having a string of relatively small municipalities surrounding New York City. Some of the municipalities were very wealthy while others were very poor. Although the municipalities were economically integrated, each of them was politically independent. In terms of practical

administration of services, it proved to be very inefficient. That model that was deliberately rejected at Alaska's Constitutional Convention.

The Commission finds that economies of scale currently enjoyed by the FNSB would be significantly diminished if the NPB proposal were granted. If detachment were to occur, it is clear that the FNSB would be strained to continue to provide the current level of services, and the proposed NPB would deliver reduced services.

Essential Services in the Proposed NPB. The Petitioners were unclear in their petition, briefs and testimony whether all essential services would continue to be provided to the residents of the proposed NPB. For example, there was a decided lack of evidence indicating to what extent, if any, the proposed NPB would provide services such as solid waste disposal, emergency medical services, animal control, transportation, child care assistance and other services directly and indirectly related to health, safety and general welfare. Additionally, the FNSB would lose eligibility for Human Services Community Matching Grants under AS 29.60.600 if detachment were to occur.

There was substantial testimony and other evidence that animal control, emergency medical, solid waste disposal and services provided under the Human Services Community Matching Grants program are essential to the health, welfare and general safety of residents of the territory proposed for detachment. The Commission finds no assurance that such essential services currently enjoyed by the residents of the territory proposed for detachment would be provided by the NPB.

Division of Flood Control Facilities. The Petitioners' proposed boundary change would bisect the Chena River flood control facilities, placing the facilities in two separate boroughs. The Commission finds that dividing flood control facilities would impair the integrity of management of the flood control project. Splitting responsibility for management of a project of that sort would be a grave error. The FNSB would be obligated to provide flood control service to the detached area under agreements with the U.S. Army Corps of Engineers, however, it would lack express authority under State law to exercise such powers extraterritorially. The petition does not address what arrangements might be made for protecting the management of that facility.

Conclusion Concerning Health, Welfare and Safety. Based on the findings noted, the Commission concludes that the health, safety and general welfare of the residents of the territory proposed for detachment and the proposed remnant FNSB would be adversely affected to a significant degree by the NPB proposal.

2. Regarding the ability of the borough to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment.

Services Desired and Needed by the Residents. The evidence reasonably suggests that a "core" of municipal services could be provided by the proposed NPB. The evidence further indicates that the proposed remnant FNSB would also be able to provide *some* level of services approaching what it does now. However, the issue is, "what is reasonably adequate?"

The needs and desires for municipal services can be gauged by what the voters of the FNSB and their elected municipal representatives have historically approved in terms of bonds and municipal powers. The Commission can also reasonably determine local sentiments by the comments and testimony offered at the hearings concerning the proposed NPB. Both measures point overwhelmingly in support of the current level of services offered by the FNSB. Using those measures as reasonable indicators of the adequacy of existing services, the Commission finds that the NPB proposal does not offer the desired and needed borough services.

Financial Capacity to Provide Essential Services. The transition plan and budget of the NPB proposal was deficient to a large extent. In particular, it lacked information needed to reach a positive conclusion concerning the ability of the proposed NPB to provide

essential services and facilities. Other evidence, particularly the responsive brief of the FNSB and the testimony of FNSB Chief Financial Officer Judi Slajer, clearly showed that adverse impacts on revenues, expenditures and the levels of services of both the NPB and the remnant FNSB would result if the proposal were implemented. That evidence demonstrated to the Commission's satisfaction that it would not be possible for the NPB or the remnant FNSB to maintain the current level of essential facilities and services.

Further, the prospects for future revenue shortages on the part of the proposed NPB is likely to grow. In that regard, the proposed NPB charter would place significant additional constraints upon the ability of that regional government to raise revenues needed to provide essential services. Thus, the Commission finds that the ability of the proposed NPB to provide essential services has not been established.

Conclusion Concerning Efficient and Effective Delivery of Reasonably Necessary Facilities and Services. Based on the findings noted, the Commission concludes that the ability of both the remnant FNSB and the proposed NPB to efficiently and effectively provide reasonably necessary facilities and services would be less than that of the current FNSB. This is due principally to the significant reduction in economies of scale that would result from detachment. Additionally, legal constraints on the ability of both the remnant FNSB and the proposed NPB to levy taxes would diminish the ability of both governments to effectively deliver the same level of essential services now enjoyed by residents of the FNSB.

3. Regarding the reasonably anticipated potential for and impact of future population growth or economic development that will require local government regulation in the territory after detachment.

As noted previously, the current FNSB is highly integrated socially, culturally and economically, as well as with respect to transportation facilities and other characteristics. The prospect for moderate growth and development of the FNSB appears reasonably certain. As such growth and development occur, the various parts of the current FNSB are not going to grow more isolated. Instead, they are going to grow more integrated. Consequently, it will become increasingly important that economic planning and land use planning be carried out on an areawide basis. Thus, the Commission finds that dividing the existing regional political unit would be a serious regression in terms of the ability of the region to effectively respond to growth and development. It would greatly hinder future economic planning and development.

Conclusion Concerning Population Growth and Economic Development. Based on the findings, the Commission concludes that there is a reasonably anticipated potential for and impact of future population growth or economic development that will require integrated areawide local government regulation in the territory proposed for detachment and that detachment would diminish the degree to which such necessary regulation could be efficiently and effectively accomplished.

4. Regarding the historical pattern of providing to the territory of municipal services that have been or should be supported by tax levies in the territory.

The Commission finds that the FNSB provides an extensive range of services in the territory proposed for detachment, most or all of which are supported by taxes levied by the FNSB. FNSB services throughout the territory proposed for detachment include education, assessment and taxation, planning, zoning, platting, animal control, flood control, libraries, air pollution control, disaster & civil defense, solid waste collection & disposal, parks & recreation, public transportation, day care assistance, health & social services and recycling. In addition, the FNSB provides emergency medical services and economic development to the territory proposed for detachment, excluding the City of North Pole. Further, there are 41 FNSB road service areas and 5 FNSB fire service

areas in the territory proposed for detachment. Public testimony and comments at the hearings indicate that many residents of the area proposed to be detached are satisfied with the current level of services.

Conclusion Regarding the historical pattern of providing to the territory of municipal services that have been or should be supported by tax levies in the territory. Based on the findings, the Commission concludes that the services being provided by the FNSB to the residents of the territory proposed for detachment are adequate and reasonably commensurate with the levels of taxation.

Obviously, residents who live in more remote areas of a municipal government do not typically enjoy the same convenient access to many municipal services that residents in the populous area do. While there may be room for improvement in every government in that context, on the whole it appears that the FNSB has provided services fairly, effectively and efficiently.

The Commission concludes further that the fragmentation of service provision between the two governments that would result from the creation of the NPB would bring about more costly and less efficient service delivery. It is an assumption of the petition for detachment and incorporation that some of the services now provided on an areawide basis would not be provided.

5. Regarding the historical pattern of cooperation and shared commitment between the people of the borough or unified municipality and the people of the territory.

The evidence is abundantly clear that the area proposed for detachment and the proposed remnant FNSB are highly interrelated and integrated in their economic and social patterns.

Human nature tends to take for granted all the things that a community or region does successfully. Too often, scrutiny is devoted only to contentious issues. The impressive level of services provided on an areawide basis and nonareawide basis by the FNSB demonstrates a degree of consensus among the residents that those are the services that ought to be provided by the borough government. That, in turn, is evidence that there is a long standing pattern of cooperation and shared commitment within the borough as a whole.

Conclusion regarding the historical pattern of cooperation and shared commitment. Based on the findings, the Commission concludes that clear and convincing evidence exists that a strong pattern of cooperation and shared commitment are present among residents of the area proposed for detachment and the remainder of the FNSB.

6. Regarding the extent that detachment might enhance or diminish the ability of the remaining borough to meet the standards for incorporation contained in the Alaska Constitution, Alaska Statutes and the regulations of the Commission.

Social, Cultural and Economic Integration. The constitutional, statutory and regulatory standards for borough incorporation require that a borough be socially, culturally and economically interrelated and integrated -- that it embrace a natural region. Article X, Section 3 of Alaska's Constitution is particularly compelling. In relevant part, it provides that, "*each borough shall embrace an area and population with common interests to the maximum degree possible.*"

Given the evidence before the Commission in this case, if a group of voters petitioned to incorporate a borough that included only the City of North Pole and area around it, the Commission would be compelled to conclude that the boundaries of that proposed borough should be enlarged to include Fairbanks and the rural areas surrounding it.

Conversely, if voters petitioned to incorporate a borough that included only the proposed remnant FNSB, the Commission would be equally compelled to expand the area proposed for incorporation to include the City of North Pole, the areas around it and some of the other more rural communities that rely on Fairbanks for employment, commercial services, transportation services and such. It is clear that the area proposed for detachment and the proposed remnant FNSB share significant common interests.

The Commission finds that the proposed detachment would clearly and substantially impair the ability of either of the two areas to fulfill the requirement that each borough embrace a natural region. Detachment would divide a highly integrated area simply for political reasons.

Minimum Numbers of Local Governments. Article X, Section 1 of Alaska's Constitution establishes a policy for minimizing the number of local government units. The Commission finds that the NPB proposal would create two boroughs to serve virtually the same population now being served by one. Such would be inconsistent with the constitutional policy noted.

Size and Stability of Population. The statutes and regulations provide that the population of a borough must be large and stable enough to support borough government. The Commission finds that the population of the proposed remnant FNSB would, in fact, be large enough and stable enough to support borough government.

General Conformance of Boundaries with Natural Geography. Borough incorporation standards require that borough boundaries conform generally to natural geography. The Commission finds that the present FNSB satisfies this standard. In contrast, the proposal to detach territory would divide drainages, thus violating natural geographic boundaries to a great degree. While in some instances it may be appropriate to divide natural drainages, such is certainly not the case in this particular instance.

Areas Necessary for Full Development of Municipal Services. Borough incorporation standards require that each borough include all areas necessary for full development of services. The issue of flood control is a prime example of how the detachment proposal would diminish the extent to which this standard would be met. As noted previously, the NPB proposal would place the Chena River flood control facilities in two boroughs. Although the two boroughs could theoretically cooperate to carry out flood control, neither would enjoy exclusive control over the facilities. Each would have to rely on the good will and administrative cooperation of the other to perform functions of vital interest to each other. Such would diminish the ability of the region to control its own fate.

Human and Financial Resources. Borough incorporation standards require that each borough have human and financial resources capable of providing municipal services. The proposed remnant FNSB would appear to have adequate human and financial resources to be incorporated.

Transportation Facilities. Borough incorporation standards require that various forms of transportation allow the communication and exchange necessary for the development of integrated borough government. Again, the existing FNSB is extremely integrated in terms of transportation. The detachment proposal would clearly diminish the existing borough in terms of that standard.

Conclusion concerning the ability of the remnant borough to meet the standards for incorporation. Based upon the findings, the Commission concludes that the proposed detachment would preclude the remnant FNSB from meeting the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060.

7. Regarding the effect of the proposed detachment on the long-term stability of the finances on the remnant FNSB and the State.

The evidence in this case, particularly the responsive brief of the FNSB and the testimony of Ms. Slajer, clearly demonstrates that detachment would have significant adverse effects on the long-term stability of the proposed remnant FNSB. These impacts include previously discussed reductions in economies of scale and the legal limitations on the ability of the remnant borough to levy taxes sufficient to maintain the current level of services. For example, the FNSB reasonably projected that detachment will result in a \$4.6 million shortfall for its operations which would require a 2.23 mill (16.2%) increase in its property tax levies. However, the FNSB tax cap would permit it to raise taxes by only 0.717 mills, leaving it \$3.2 million short of what is needed to continue delivery of services at the present level.

In addition, serious adverse effects can be reasonably anticipated to result from a protracted and difficult division of assets and liabilities of the FNSB. Further, there was ample evidence that the detachment would impair the ability of the remnant FNSB to maintain its current credit rating in the bond market.

The NPB proposal would also adversely impact the State in that it would create two governments providing services where only one exists currently. For example, the FNSB School District, which the evidence shows is among the most efficient and effective school districts in Alaska, would be divided into two separate districts. It is clearly not in the financial interests of the State to allow the unwarranted proliferation of school districts.

Conclusion regarding the financial effects of detachment. Based on the foregoing findings, the Commission concludes that the proposed detachment would have adverse effects on the long-term stability of the finances of the remnant FNSB and the State of Alaska.

8. Whether the proposed detachment will promote local self-government with a minimum number of governmental units.

Article X, Section 1 of Alaska's Constitution provides for "*maximum local self-government with a minimum of local government units.*" There are two aspects to that principle. The first is "maximum local self-government" and the second is "minimum numbers of local governments."

With regard to the first aspect of the principle, the Commission considers "maximum local self-government" to be used in the context of the scope of local governmental services and powers, not government at the most localized level possible. In other words, it is meant to maximize the scope of powers available at the local level to provide local governmental services.

To define the phrase otherwise would, of course, lead to a great proliferation of local governments and significant inter-governmental strife. The proposed detachment from the FNSB is more likely to promote inter-governmental conflict in the long-term and impair the ability of the residents of the collective area to effectively provide local self-government and local services.

The history of the Constitutional Convention clearly shows that the delegates wanted to provide for a devolution of State services such as education and land use planning. The delegates wanted those functions transferred from the State to regional governments that were established according to criteria that would promote efficient and effective service delivery.

It was evident that the Petitioners' interpretation of maximizing local self-government is to have a sheriff to, for example, confront officials of the U.S. Environmental Protection Agency and escort them from the borough. That does not comport with the

Commission's understanding of the intention of the delegates to the Constitutional Convention. The delegates wanted all of Alaska to be divided into reasonable administrative units. Maximizing local self-government concerns the provision of services, not confronting officials of the federal or state governments at the border. In reality, the NPB proposal, by the nature of the charter itself, diminishes maximization of local self-government when local self-government is defined in terms of services provided in the most reasonable administrative area.

The Commission believes the intent of Article X was to provide a local government framework that embraced a logical natural region. Contending parties would have a forum within which to settle regional issues, rather than draw arbitrary political boundaries to separate regional interests and multiply the number of local governments, thus depriving residents of the ability to resolve conflicts. The division of one borough into two merely in response to local political controversy is contrary to the intent of Article X of Alaska's Constitution. Instead, it would be appropriate to encourage dissidents to resolve their differences within the existing framework of municipal jurisdictions rather than create two separate governmental units.

It's obvious that the NPB proposal violates the second part of the provisions set out in Article X, Section 1 calling for "the minimum number of local units." As noted previously, if the NPB proposal were to be implemented, two governments would exist to serve essentially the same population now being served by one government.

Conclusion Concerning Maximum Local Self-Government with a Minimum of Local Government Units. Based on the foregoing findings, the Commission concludes that the NPB proposal neither promotes maximum local self-government nor minimizes the number of local government units.

9. Whether the territory's requirements for local government services will be adequately met following detachment.

The Petitioners' Representatives have consistently stressed that they are unable to guarantee what future budgets will provide or what future decisions of a new assembly might be. Nevertheless, the Commission finds that the Petitioners are obliged to ensure that their proposed budget, transition plan, and charter provide feasible and plausible demonstrations that the necessary financial resources exist and that it is possible to provide the services proposed within their budget. There must be a feasible transition plan to implement the services to be provided by the proposed new borough. The Commission cannot determine with confidence that the proposed new borough would be able to deliver the services that are both needed and desired. The petition along with the accompanying exhibits and briefs inspire no confidence that the proposed NPB would be able to satisfy the requirements for local governmental services in the area proposed for detachment. The petition is deficient in terms of explaining the financing and administration of the proposed NPB.

The Commission must be able to determine a territory's needs and requirements for local government services. Again, the testimony and comments at the Commission's hearings serves as credible evidence to make such a determination. Many of those who testified in opposition to the proposed NPB spoke highly of the services they received from the FNSB. They generally indicated that they were well served.

The majority of the testimony and comment heard from the NPB proponents was not critical of the types of services currently provided by the FNSB. Most of the criticism from the NPB proponents dealt with the perception that the FNSB was not serving the area proposed for detachment well enough. The level of services being provided was criticized. Ironically, the NPB would cut the current level of services. The services of the proposed NPB are below the needs and expectations of the people who would be served by it.

Conclusion whether the territory's requirements for local government services will be adequately met following detachment. Based on the foregoing findings, the Commission concludes that the requirements for local government services in the territory proposed for detachment will not be met if detachment occurs.

Overall Conclusions Concerning the Satisfaction of the Applicable Standards for Detachment of Territory from FNSB and its Effect on the Merits of the Separate Petition to Incorporate the NPB.

As noted previously, the law provides that territory may be detached from an organized borough only if the Commission determines that the proposed detachment will serve the balanced best interest of the State, the territory to be detached and the political subdivisions affected by the detachment. Based on the findings and conclusions with respect to the nine factors addressed by the Commission in this matter, the Commission now concludes that the Petitioners have failed to demonstrate that detachment would serve the balanced best interests of the State, the territory and the affected political subdivisions. On the contrary, the evidence in the case is overwhelming that detachment would have serious adverse effects on the territory, affected political subdivisions and the State of Alaska.

Given the characteristics of the NPB proposal, it is axiomatic that incorporation of the NPB cannot occur unless the 5,400 square mile detachment proposal is approved. This is clearly the case since all but an estimated 30 - 35 of the 23,713 residents of the proposed NPB presently live in the area proposed for detachment. Further, the Petitioners' Representative has conceded that the inclusion of territory presently within the Alaska Gateway School District would be contrary to the constitutional, statutory and regulatory standards governing borough incorporation. Those standards are reflected in 19 AAC 10.060(b) and (c). The former provides: *"Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond the model borough boundaries adopted by the commission."* The latter provides: *"The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough."*

By extension, the concession by the Petitioners' Representative with respect to the Alaska Gateway School District applies equally to those parts of the Yukon Flats and Delta-Greely School Districts that are included in the NPB proposal.

Section IV - Order

As a result of the conclusions reached in this case, on August 8, 1996, the Commission unanimously denied the petition for detachment of an estimated 5,400 square miles from the FNSB and also denied the petition to incorporate the North Pole Borough.

APPROVED IN WRITING THIS 30th DAY OF AUGUST, 1996

LOCAL BOUNDARY COMMISSION

BY:

Kathleen Wasserman, Acting Chairperson

ATTEST:

Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under provisions of 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analysis that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision becomes final under provisions of 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the Petitioners or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

Judicial Appeal. A decision of the Commission may be appealed to Superior Court. The appeal must be made in accordance with Alaska Rules of Appellate Procedure, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.
